

IN THE UNITED STATES DISTRICT COURT FOR THE DISTRICT OF MASSACHUSETTS

INNER-TITE CORP.

Plaintiff

v.

DEWALCH TECHNOLOGIES, INC.

Defendant

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CIVIL ACTION NO. 04-40219

SUPPLEMENTAL DECLARATION OF BINZ DEWALCH

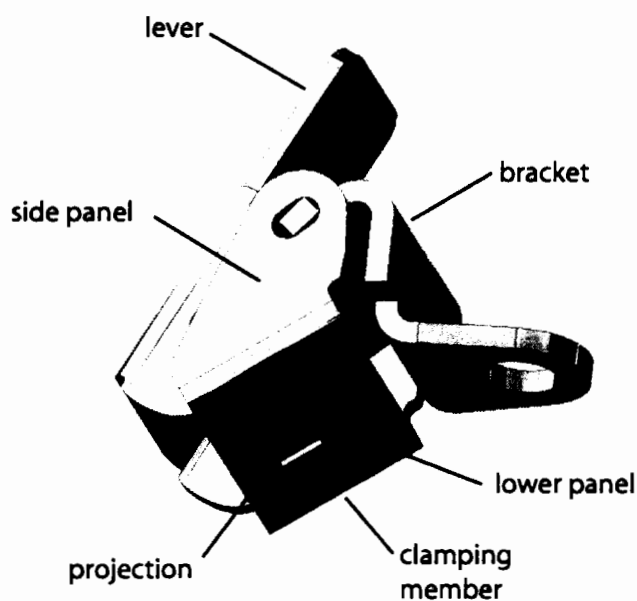
Binz DeWalch, being duly sworn, deposes and says that:

1. My name is Binz DeWalch. I am over eighteen (18) years of age and fully competent in all respects to give this Declaration. All statements of fact in this Declaration are of my own personal knowledge and are true and correct. All statements made on information and belief in this Declaration, which are noted herein when made, are believed to be true.

2. In my Declaration previously filed in this case, I attached as Exhibit 3 a true and correct copy of the file history for the '691 Patent received from the United States Patent Office. Attached hereto as Exhibit 1 is a true and correct copy of United States Patent No. 4,202,574. Attached hereto as Exhibit 2 is a true and correct copy of an office action dated May 29, 2003 from the file history for the '691 Patent. Attached hereto as Exhibit 3 is a true and correct copy of an Appeal Brief dated September 15, 2003 from the file history for the '691 Patent.

3. Each of the ProLock Products have a mounting bracket, a clamping member, and a lever. The mounting bracket consists of a bracket with first, second, and third flanges, connected by intermediate webs; the clamping member consists of two side panels and a lower panel and is connected by pins to the mounting bracket for rotation outside of the mounting

bracket; and the lever is also connected by pins to the mounting bracket so as to allow the user to apply force to the clamping member and clamp the ProLock Products in place on the utility box. The difference in the ProLock Product 2 is that a portion of the lower panel of the clamping member has been removed to provide material for secondary engagement tabs for additional security. Some of these features are identified in the drawing below of the ProLock Product 1 and in my prior Declaration.



4. The ProLock Products are clamped in place by pushing down on the lever to force the front edges of the two side panels of the clamping member into contact with the wall of the utility box outside of the first flange of the mounting bracket. In support of this Declaration, I have incorporated below true and correct copies of photographs I took of ProLock Products 1 and 2 installed on a Landis & Gear brand of utility box, which is a different brand than the Cutler-Hammer brand that was filed with the Court. It is my opinion that the ProLock Products function essentially the same on both brands of utility boxes. Each of these photographs accurately depict the operation of the ProLock Products 1 and 2. The picture below is the

ProLock Product 1. I have also added the arrows and circles shown on the drawings below using Adobe Illustrator software.



The two side panels of the clamping member of the ProLock Products are each outside of, and rotate outside of, the first and second flanges of the mounting bracket. In this regard, the two side panels that serve to clamp the ProLock Products in place on the utility box are not “between” the first and second flanges of the mounting bracket. The front edges of the two side panels, acting in concert with the pressure of the first flange on the exterior of the side wall of the utility box, place the side wall of the utility box in sheer and bending, thereby clamping the ProLock Products in place upon the utility box. These forces are indicated by the green arrows in the photographs above and below of the installed ProLock Products. The two side panels of the clamping member never enter or cross into the wedge-shaped space between the two flanges. In the ProLock Product 2 shown below, a portion of the lower panel of the clamping member has

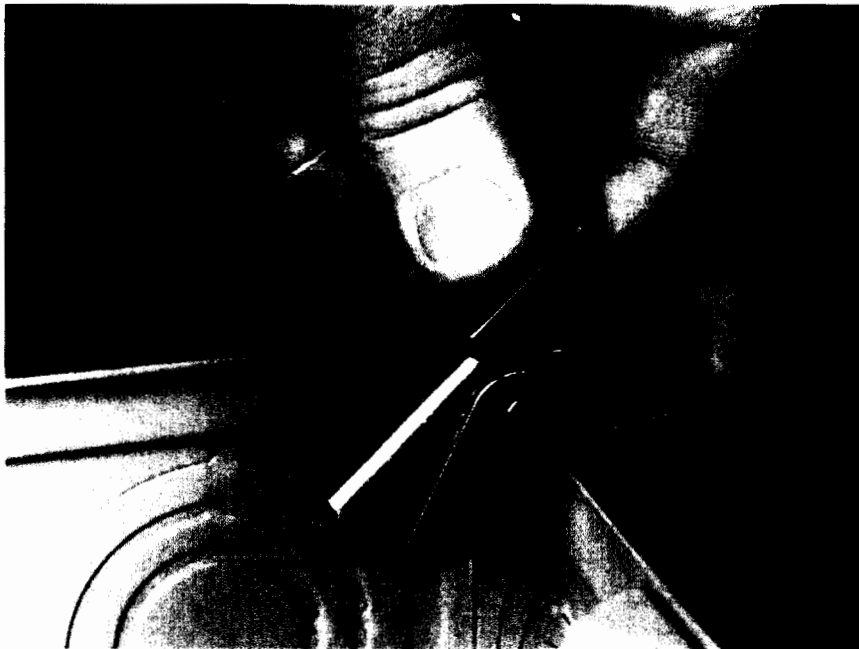
been removed to provide material for secondary engagement tabs, but again the two side panels of the clamping member similarly act in concert with the first flange to clamp the ProLock Product 2 in place upon the utility box:

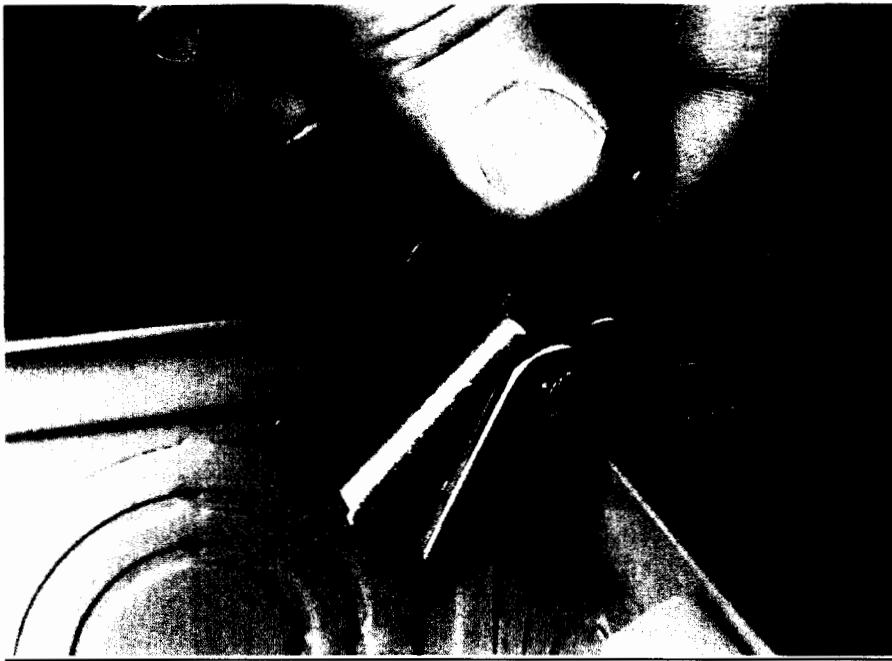


As can be seen above, the lower panel of the clamping member of each of the ProLock Products does not “grip or crush” like the jaw of the ‘691 Patent. The ProLock Product has been designed to include a gap between the lower panel of the clamping member and the side wall of the utility box to accommodate variations in the dimensions of utility boxes from various manufacturers. This gap can be seen in the circles shown on the photographs above of the installed ProLock Products. The function of the front edge of the lower panel of the clamping member is to provide additional security in the event that pressure is applied to pry open the utility box. In the event that pressure is applied to pry open the utility box, the front edge of the lower panel of the clamping member would be urged into abutment with the ledge of the side wall of the utility box. The secondary engagement tabs of the ProLock Product 2 provide additional security to prevent

someone from prying open the utility box. In the event that pressure is applied to pry open the utility box, the engagement tabs of the ProLock Product 2 would be urged into abutment with the ledge of the side wall of the utility box. Finally, the lower panels of the clamping members of the ProLock Products are never “between” the first and second flanges. The two side panels of the clamping members never enter or cross into the wedge-shaped space between the two flanges.

5. There are three steps in the installation of the ProLock Products. First, the ProLock Product is placed on the wall of the utility box without the lever exerting any force on the clamping member. Here are photographs of the ProLock Product 1 and 2 in this step of the installation:





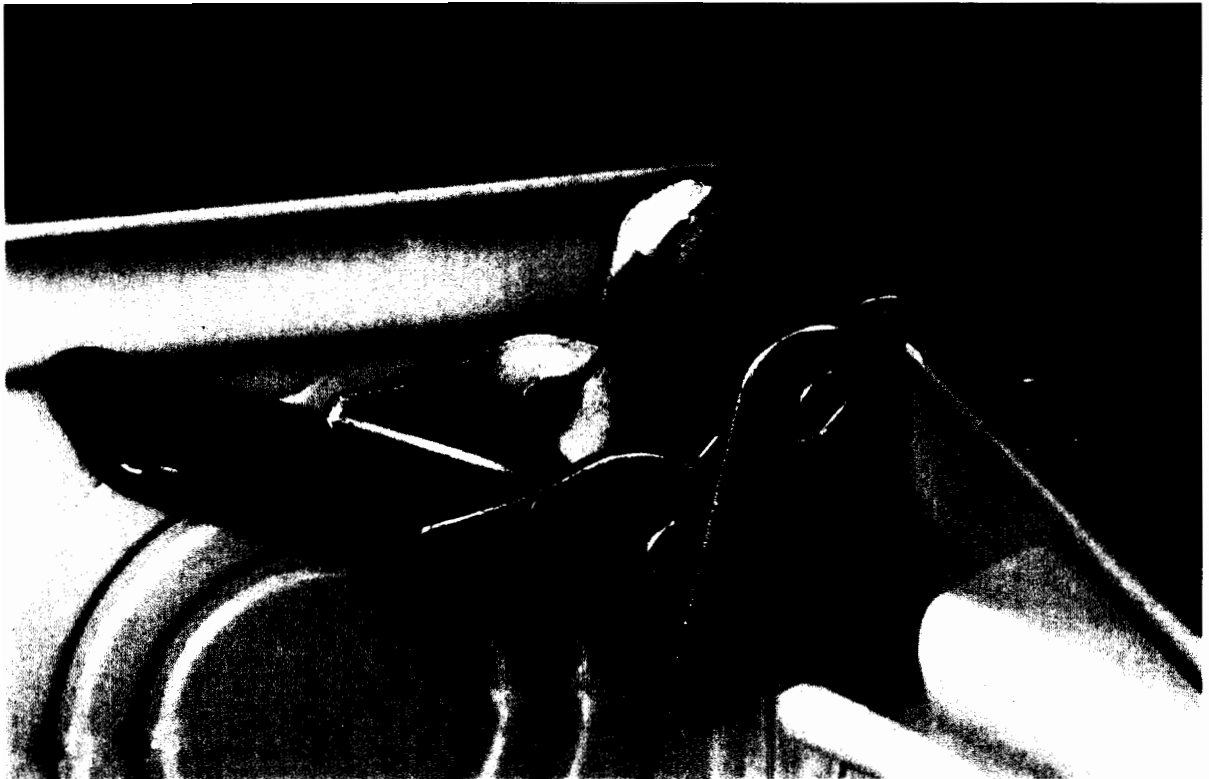
It should be noted that the front edges of the two side panels make contact with the side wall of the utility box outside of the first and second flanges of the mounting bracket.

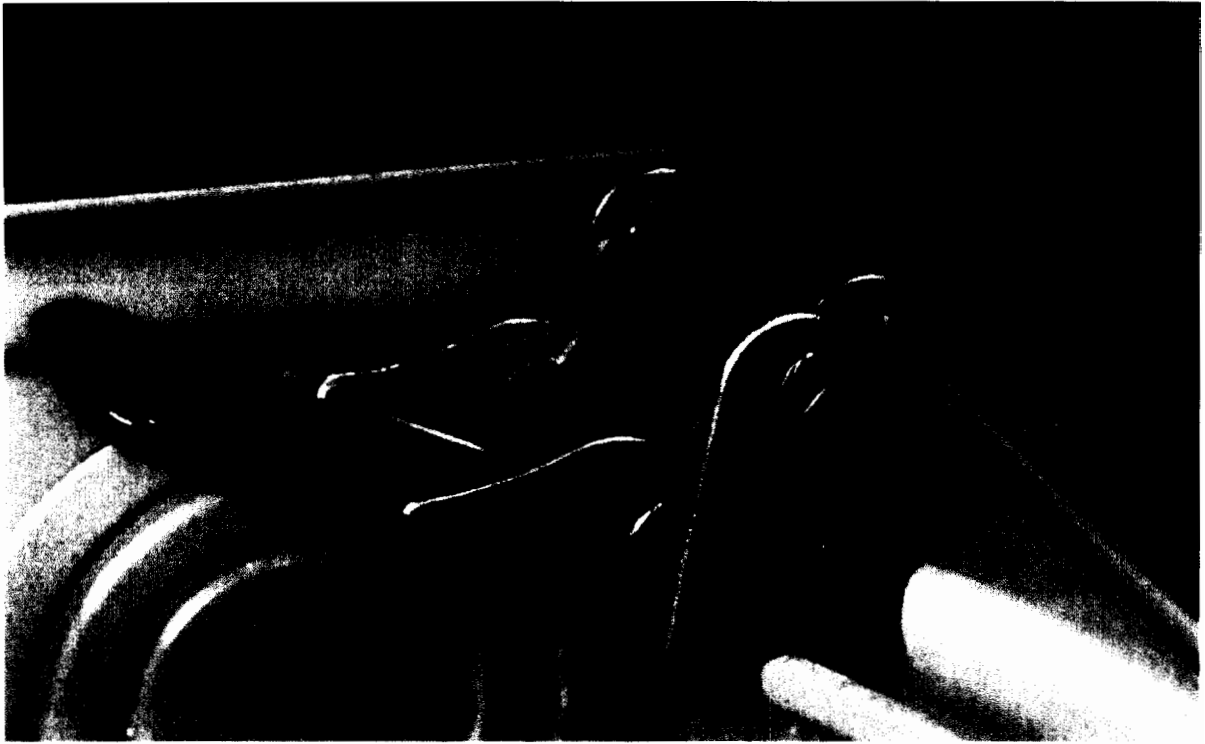
6. Next, the lever is depressed to push the front edges of the two side panels of the clamping member into contact with the side wall of the utility box by the side panels rotating outside of the mounting bracket and to bring the first flange in contact with the outside wall of the utility box as shown below:





7. Next, once the front edges of the two side panels of the clamping member are in contact with the side wall of the utility box, additional force placed on the lever pushes the front edges of the two side panels against the interior of the side wall of the utility box, and this force on the side panels, acting in concert with the pressure of the first flange on the exterior of the side wall of the utility box, places the side wall of the utility box in sheer and bending, thereby clamping the bracket in place upon the utility box. The two photos below show the ProLock Products 1 and 2 brackets fully installed.





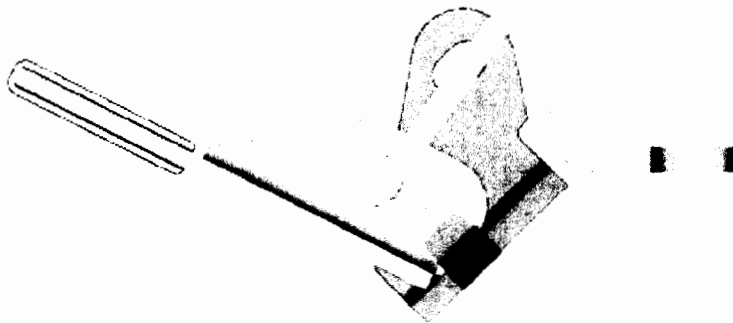
8. The two following photos of the ProLock Products 1 and 2 provide a perspective view on the space that separates the first and second flanges:



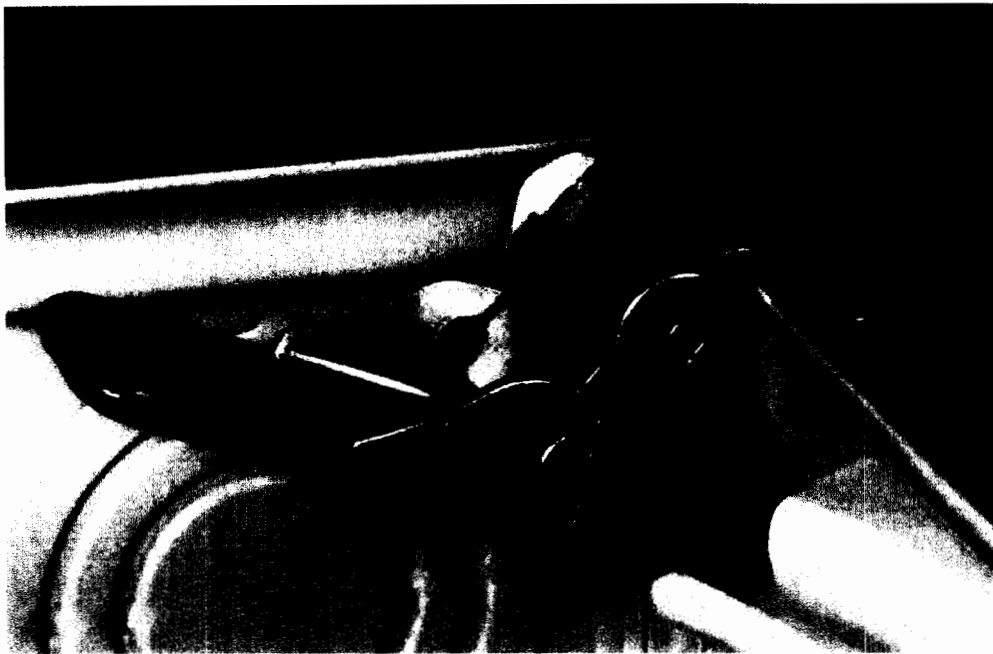
The lower panel (as well as the two side panels) of the clamping members on ProLock Product 1 and 2 never enter or cross into the wedge-shaped space between the first and second flanges. At no point during the installation of the ProLock Product is the lower panel of the clamping member located in the space that separates the first and second flanges. As a result, the lower

panels of the clamping member are not located between, or “in or through the space that separates,” the first and second flanges of the mounting bracket.

9. I have reviewed the Affidavit of Robert E. Rafferty and the attached drawings. There are a number of obvious inaccuracies in the drawings of the ProLock Product 1 and 2. Picture 3A of Exhibit A (shown below) purports to show the ProLock Product 1 when it is clamped in place. Picture 3A is inaccurate because it does not show the front edge of the two side panels of the clamping member in contact with the inner wall of the utility box. Instead, Picture 3A incorrectly shows the lower panel of the clamping member in direct contact with the inner wall of the utility box:



In the ProLock Product 1, the front edges of the two side panels of the clamping member, acting in concert with the pressure of the first flange on the exterior of the side wall of the utility box, place the side wall of the utility box in sheer and bending, thereby clamping the ProLock Product 1 in place upon the utility box. The photograph below of the ProLock Product 1 makes clear that the side panels, and not the lower panel, are in contact with the inner side wall of the utility box:



Thus, Picture 3A misrepresents the ProLock Product 1 by showing the front edges of the side panels of the clamping member not in contact with the inner wall of the utility box. Similarly, Picture 3A of Exhibit A is inaccurate because it shows the front edge of the lower panel in contact with the inner wall of the utility box and compressed against the ledge on the inner wall of the utility box. The ProLock Product has been designed to include a gap between the lower panel of the clamping member and the side wall of the utility box to accommodate variations in the dimensions of utility boxes from various manufacturers. This gap can be seen in the photographs above of the installed ProLock Product 1.

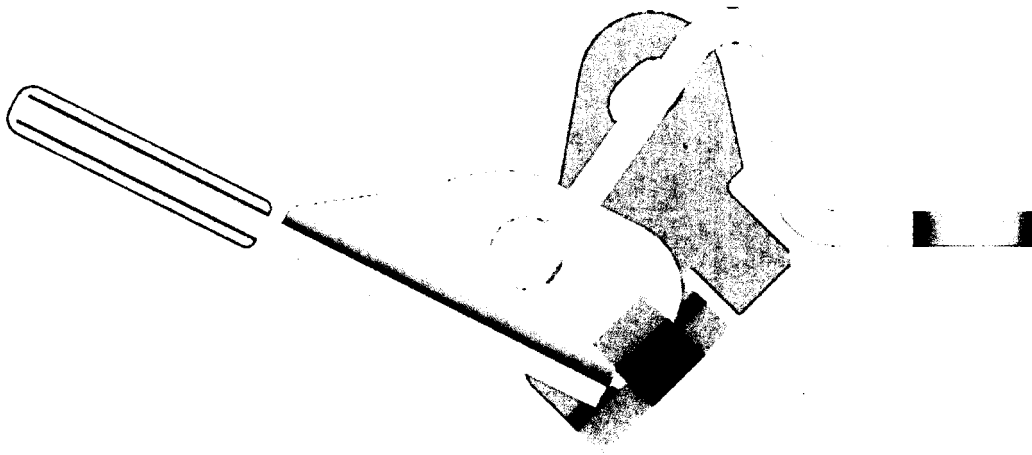
10. Pictures 1, 2A, 3A and 3B of Exhibit A are inaccurate and thus unreliable because the pictures do not show the pins of the bracket of the ProLock Product 1. The position of the pins determines the path of the movement of the two side panels and the lower panel, and their absence in this picture contributes to an inaccurate depiction of the operation of the ProLock Product 1. Other dimensional inaccuracies in the angle between the first and second flanges and

the shape of the front edge of the side panels contribute to the inaccuracy of the drawings of the ProLock Product 1.

11. Pictures 2A and 2B of Exhibit A show the ProLock Product 1 without a lever. The ProLock Product 1 has a lever. In actual operation, it is not possible for the clamping member to touch the second flange of the mounting bracket because the lever is in between the clamping member and second flange. The photo below of the ProLock Product 1 shows that the lever 4 prevents the clamping member from touching the second flange 3. ProLock Product 2 works in a similar fashion:



12. Picture 3A of Exhibit B purports to show the ProLock Product 2 when it is clamped in place. Picture 3A is inaccurate because it does not show the front edge of the two side panels of the clamping member in contact with the inner wall of the utility box. Instead, Picture 3A incorrectly shows the engagement tabs of the clamping member in direct contact with the inner wall of the utility box:



In the ProLock Product 2, the front edges of the two side panels of the clamping member, acting in concert with the pressure of the first flange on the exterior of the side wall of the utility box, place the side wall of the utility box in sheer and bending, thereby clamping the ProLock Product 1 in place upon the utility box. The photograph below of the ProLock Product 2 makes clear that the side panels, and not the lower panel, are in contact with the inner side wall of the utility box:



Thus, Picture 3A misrepresents the ProLock Product 2 by showing the front edges of the side panels of the clamping member not in contact with the inner wall of the utility box. Similarly, Picture 3A of Exhibit B is inaccurate because it shows the engagement tabs of the lower panel in contact with the inner wall of the utility box and compressed against the ledge on the inner wall of the utility box. The ProLock Product 2 has been designed to include a gap between the engagement tabs of the clamping member and the side wall of the utility box to accommodate variations in the dimensions of utility boxes from various manufacturers. This gap can be seen in the photographs of the installed ProLock Product 2 above.

13. Pictures 1, 2A, 3A and 3B of Exhibit B are inaccurate and thus unreliable because the pictures do not show the pins of the bracket of the ProLock Product 2. The position of the pins determines the path of the movement of the two side panels and the lower panel, and their absence in this picture contributes to an inaccurate depiction of the operation of the ProLock Product 2. Other dimensional inaccuracies in the angle between the first and second flanges and

the shape of the front edge of the side panels contribute to the inaccuracy of the drawings of the ProLock Product 2.

14. Pictures 2A and 2B of Exhibit B show the ProLock Product 2 without a lever. The ProLock Product 2 has a lever. In actual operation, it is not possible for the clamping member to touch the second flange of the mounting bracket because the lever is in between the clamping member and first flange.

I declare under penalty of perjury under the laws of the United States of America that the foregoing is true and correct.

Executed on June 6, 2006.



Binz DeWalch

Certificate of Service

I hereby certify that this document filed through the ECF system will be sent electronically to the registered participants as identified on the Notice of Electronic Filing (NEF) and paper copies will be sent to those indicated as non-registered participants on the NEF.

/s/ Denise W. DeFranco